

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10429 of 1995

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

KANAIYALAL ASHARAM VYAS

Versus

EXECUTIVE ENGINEER

Appearance:

MR HA PANIWALA for Petitioner

MR PV HATHI for Respondent No. 1

MR DA BAMBHANIA for Respondent No. 2

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 23/06/97

ORAL JUDGEMENT

The petitioner claims to be a Road Roller Driver serving under the respondent No.1 herein. It is the claim of the petitioner that Junagadh District Panchayat under its order dated 8th December, 1993, sanctioned a pay of Rs.1150/- in the scale of Rs.1150-1500 to a Road Roller Driver viz. one Shri Yusufkhan Umarghan Babi.

The petitioner being a Road Roller Driver, claims a similar treatment and pay in the pay scale of Rs.1150-1500. In paragraph-8 of the petition, it is averred that the petitioner's claim is not supported by any Union and the petitioner is therefore constrained to prefer this petition under Article 226 since the remedy before the Industrial Tribunal is not available to him. In paragraph-4 of the petition, it is averred that the petitioner has not filed any other proceedings before any court in the subject matter of this petition. The petition is affirmed by one Shri Kunversingh Mulubha Gohil since at the time of affirmation of the petition, the petitioner was suffering from injury and was confined to bed.

2. Petition is contested by the respondent No.1. It is disputed that the petitioner is a Road Roller Driver. It is contended that the petitioner is a Driver and not a Road Roller Driver as is claimed by him. It is further contended that the petitioner has raised an Industrial Dispute in the subject matter of this petition as far back as in the year 1988 being Reference No. 204/88 which is preferred through Jamnagar District Mazdoor Sangh and is pending before the Tribunal.

3. In view of the above referred disputed questions of fact and in view of the Reference, in the subject matter of this petition, pending before the Industrial Tribunal, the petition is required to be rejected. Besides, this petition which is not affirmed by the petitioner, is not maintainable. The petitioner has suppressed the fact that he has raised an Industrial Dispute in the subject matter of this petition. He has also tried to mislead the court by making misrepresentation with regards the Industrial Dispute raised by him. Further it is also disputed that the petitioner suffered from any injury or was confined to bed as is averred by him. It is contended that in the month of December, 1995, the petitioner had reported for duty althroughout. In view of the above facts, the petition deserves to be dismissed. Petition is dismissed with costs. Cost is quantified at Rs.1500/-. Rule is discharged.
